

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-185097

DATE: January 23, 1976

MATTER OF: Williamsburg Steel Products Company

DIGEST:

Procuring activity properly rejected as nonresponsive protester's low bid, submitted in form of a letter rather than on solicitation's Standard Form 33, since letter stated bid was subject to conditions which varied in several material respects from terms and conditions of solicitation.

The Williamsburg Steel Products Company (Williamsburg) has protested the rejection of its bid by the General Services Administration (GSA), Public Buildings Service (PBS), in connection with Contract No. GS-00B-03218, calling for the furnishing of hollow metal material (doors and frames) to be used in the construction of the Federal Home Loan Bank Board Building, Washington, D.C. The low bid of Williamsburg was not submitted on the solicitation's Standard Form (SF) 33, "Solicitation, Offer and Award", but was furnished in the form of a letter. It was rejected as nonresponsive because it imposed conditions and provisions different from those set forth in the solicitation.

Williamsburg protests the rejection of its bid on the grounds that SF 33 does not specifically require all bids be submitted thereon and that the Government in the past has accepted bids submitted on other than the standard forms provided by the solicitation. Furthermore, the protester contends that since its bid did not take exception to the statement on SF 33 that "Award would be made on this form, or on Standard Form #26 or by other final written notice," it was "willing to accept the award * * * on this basis."

The protester asserts that there was nothing in the invitation that required a bidder to submit its bid on the form provided by the Government in order to be eligible for award of a contract. In this regard, our Office has long recognized that a bid, to be

considered for award, need not be submitted on the official bid form provided with the IFB, but may be submitted on the company's letterhead or other correspondence so long as the terms and conditions of the contract are accepted. See B-178559, June 25, 1973, and cases cited therein. See also section 1-2.301(c) of the Federal Procurement Regulations (1974 ed.), which reads, in part, as follows:

"* * * If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if (1) the bidder accepts all the terms and conditions of the invitation, and (2) award on the bid would result in a binding contract, the terms and conditions of which do not vary from the terms and conditions of the invitation."

The record shows, however, that Williamsburg's bid was not rejected because it was not submitted on SF 33. Rather, GSA rejected the bid because Williamsburg, by submitting the bid on its own pre-printed letterhead rather than SF 33, would not have been bound to several of the material provisions of the invitation had the bid been accepted.

SF 33, in the portion entitled "Solicitation", advised potential contractors that bids were subject to the provisions and requirements of all the documents attached or incorporated by reference. Thus, bids were to be submitted on the basis of the SF 33 itself, the "General Provisions" of SF 32, the GSA Supplemental Provisions set out in GSA Form 1424 and the additions thereto; and the "attached specifications" (divided into sections 0110, 0110.D and 0870). Subsequently, GSA issued several amendments to the invitation which, inter alia, added specifications section 0810.

However, Williamsburg's bid read in pertinent part:

"We quote \$35,985.00 to furnish and deliver materials per plans and specifications section 0810, 'Metal Doors and Frames'. Addenda #1 through 5.

* * * * *

"This proposal is * * * subject * * * to the conditions on the reverse side hereof."

Those conditions were materially different from those set forth in the documents referenced in the invitation. GSA describes some of these differences as follows:

"Bids were solicited for fabricating, or manufacturing, and delivering the hollow metal material. Section 0110D, paragraph 5 makes the contractor responsible for protection of material in transit and for repair of damage. Bidders submitting unqualified bids on Standard Form 33 would have been bound by these requirements upon acceptance of their bids. Williamsburg, in contrast, excluded shipping costs from its bid (see Item 1 on the reverse of its bid and the definition of FOB origin, freight allowed, set out in FPR 1-19.304) as well as the responsibility for crating or repair of damage after the materials left its factory.

"By Item 12, Williamsburg's bid provided that 'We will not accept any contract including liquidated damages or penalties.' Bidders submitting their bids on SF 33 would, thereby, have become bound to the liquidated damages provisions in paragraph 8 of Section 0110D upon acceptance of their bids.

"Under the provisions of Item 16 of Williamsburg's bid, the Government would (if the bid were to be accepted) incur a penalty of 10% of the contract price if it terminated the contract prior to fabrication or the total contract price less cost of manufacturing the balance of the material if the Government terminated the contract after the start of fabrication. The Government's obligations would be totally different than if the contract were terminated for default or for the convenience of the Government, under the provisions of SF 32 containing Clause 11, Default, and GSA Form 1424, containing Clause 46, Termination for Convenience of the Government.

"If Williamsburg's bid were accepted, disputes would be resolved by arbitration. Bidders submitting bids on SF 33, which incorporated SF 32, would be bound to resolution of disputes by the method specified in Clause 12 of SF 32."

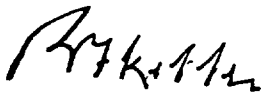
We think it is clear that under these circumstances, acceptance of Williamsburg's bid as submitted would have resulted in a contract that did not include all the material terms and conditions of the IFB. It is a basic principle of Federal procurement law that to be considered for award, a bid must comply in all material respects with the invitation for bids so that all bidders will stand on an equal footing and so that the integrity of the competitive bidding system will be maintained. FPR 1-2.301; 41 Comp. Gen. 721 (1962); Thomas Construction Company, Inc., B-184810, October 21, 1975, 55 Comp. Gen. ___, 75-2 CPD 248. We have previously held that bids which deviate from solicitation requirements with respect to delivery terms, 43 Comp. Gen. 813 (1964); liquidated damages, 36 Comp. Gen. 535 (1957); and other basic provisions, 37 Comp. Gen. 110 (1957), contain material deviations and must be rejected as non-responsive. We point out that these material deviations may result from statements on letterheads accompanying bids, 36 Comp. Gen. 535, supra, or from references in such letters to a bidder's standard conditions of sale. 37 Comp. Gen. 110, supra.

Notwithstanding the above, Williamsburg asserts that it is willing to accept the award now on the basis of SF 33 and that "it would be a distinct disservice to the Government to pay a higher price for material, on the very narrow technical grounds" used by GSA to reject its bid. Acceptance of the bid on that basis, however, would be tantamount to permitting Williamsburg to submit a second bid, see 40 Comp. Gen. 432 (1961), which would be contrary to the well established principle that bids may not be altered after bid opening so as to make them acceptable. "Any such procedure, 'which permits a bidder "two bites at the apple," tends to subvert the purposes of the statutes governing procurement under competitive procedures.' 38 Comp. Gen. 532, 535 (1959)." Veterans Administration re Welch Construction, Inc., B-183173, March 11, 1975, 75-1 CPD 146. With regard to Williamsburg's bid price, it has been our consistent position that strict maintenance of the established principles of competitive procurement by Government agencies is infinitely more in the public interest than for the Government to obtain a pecuniary advantage in a particular case by violation of the rules. 52 Comp. Gen. 604, 607 (1973).

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Accordingly, it is our view that Williamsburg's bid was nonresponsive and that GSA was precluded from accepting the bid on SF 33 or in any other manner.

For the foregoing reasons, Williamsburg's protest is denied.


Deputy Comptroller General
of the United States